APPENDIX A

IN THE DISTRICT COURT
OF TRAVIS COUNTY, TEXAS
201ST JUDICIAL DISTRICT

CAUSE NO. 99-11702

OVERNITE TRANSPORTATION COMPANY,
Plaintiff,

VS.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO,

and

TEAMSTERS LOCAL UNION 657,
Defendants.

ORDER GRANTING PARTIAL SUMMARY JUDGMENT

On the date set forth below, came on to be considered the Motion of Defendant Local 657 for Partial Summary Judgment with respect to Count III of Plaintiff's Original Petition alleging tortious interference with contract. Based upon the submissions of the parties, it is the conclusion of the Court that the ~~conduct made the basis of Plaintiff's claim is arguably protected by the National Labor Relations Act, 29 U.S.C. § 151, *et seq.* and is therefore preempted by that statue.~~ [Motions for Partial Summary Judgment should be granted. P. D.] [Handwritten entry]

Based upon the foregoing, IT IS HEREBY ORDERED that Defendant Local 657's Motion for Partial Summary Judgment is hereby GRANTED and Count III of Plaintiff's Original Petition is hereby DISMISSED as to all Defendants.

SIGNED THIS 24th DAY OF February, 2000.

Paul Davis (Original signed)
DISTRICT JUDGE

APPENDIX B

COURT OF APPEALS
FOR THE
THIRD DISTRICT OF TEXAS
P.O. BOX 12547, AUSTIN, TEXAS 78711-2547
(512) 463-1733

DIANE O'NEAL, CLERK

Date:	March 29, 2001
Case Number:	03-00-00390-CV
Trial Court No.:	99-11702-A
Style:	Overnite Transportation Company v. International Brotherhood of Teamsters, AFL-CIO, and Teamsters Local Union 657

The enclosed opinion and judgment were sent this date to the following persons:

Mr. Frank J. Saibert
Matkov, Salzman, Madoff & Gunn
55 East Monroe Street, Suite 2900
Chicago, IL 60603

Mr. David Van Os
David Van Os & Associates, P.C.
1530 North Alamo Street
San Antonio, TX 78215

Mr. James L. Hicks Jr.
James L. Hicks, Jr. P.C.
Stemmons Place, Suite 1100
2777 N. Stemmons Freeway
Dallas, TX 75207-2288

The Honorable Paul R. Davis, Jr.
200th District Court
Travis County Courthouse
P. O. Box 1748
Austin, TX 78767

Mr. James G. Ruiz
Winstead Sechrest & Minick
100 Congress, Suite 800
Austin, TX 78701

Mr. G. William Babb (sic)
Babb (sic) & Denison
Stemmons Place, Suite 1100
2777 N. Stemmons Freeway
Dallas, TX 75207

The Honorable Amalia
Rodriguez-Mendoza
District Clerk
Travis County Courthouse
P. O. Box 1748
Austin, TX 78767

TEXAS COURT OF APPEALS,
THIRD DISTRICT,
AT AUSTIN

JUDGMENT RENDERED MARCH 29, 2001

No. 03-00-00390-CV

OVERNITE TRANSPORTATION COMPANY,
Appellant,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO,
and
TEAMSTERS LOCAL UNION 657,
Appellees.

APPEAL FROM 201ST DISTRICT COURT OF
TRAVIS COUNTY BEFORE CHIEF JUSTICE ABOUSSIE,
JUSTICES B. A. SMITH AND PATTERSON
REVERSED AND REMANDED—
OPINION BY JUSTICE PATTERSON

THIS CAUSE came on to be heard on the record of the court below, and the same being considered, because it is the opinion of this Court that there was error in the trial court's summary judgment: IT IS THEREFORE considered, adjudged and ordered that the summary judgment of the trial court is reversed, and the cause is remanded for further proceedings. It is FURTHER ordered that the appellees pay all costs relating to this appeal, both in this Court and the court below; and that this decision with a copy of the opinion herein delivered be certified below for observance.

TEXAS COURT OF APPEALS,
THIRD DISTRICT,
AT AUSTIN

No. 03-00-00390-CV

OVERNITE TRANSPORTATION COMPANY,
Appellant,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO,

and

TEAMSTERS LOCAL UNION 657,
Appellees.

FROM THE DISTRICT COURT OF TRAVIS COUNTY,
201ST JUDICIAL DISTRICT NO 991-11702-A,
HONORABLE PAUL DAVIS, JUDGE PRESIDING

Overnite Transportation Company appeals the trial court's summary judgment denying its claim for tortious interference with business contracts and relationships against appellees International Brotherhood of Teamsters, AFL-CIO, and Teamsters Local Union 657. Overnite presents two issues on appeal. We reverse the trial court's judgment.

Overnite sued the appellees for defamation and tortious interference arising from the appellees' efforts to organize its employees. Overnite alleged that as part of a campaign to induce its employees to join the Teamsters and to designate a local labor union affiliated with the Teamsters as their collective bargaining representative, the appellees circulated a defamatory flier to Overnite's customers in Texas. According to Overnite, the flier falsely stated that the National Labor Relations Board had found Overnite guilty of

hundreds of labor law violations, including discrimination, intimidation, and retaliation against workers. Overnite alleged that publishing the defamatory flier to its customers injured its business relationships and contracts.

Both appellees moved for summary judgment on the tortious interference claim, asserting that their acts were justified and that the National Labor Relations Act preempted Overnite's claim. The trial court granted the motions without stating its ground and severed the tortious interference claim, making the partial summary judgment final for appeal.

As movants relying on the defenses of justification and preemption, the appellees assumed the burden to conclusively prove all essential elements of each defense. *Swilley v. Hughes*, 488 S.W.2d 64, 67 (Tex. 1972). On appeal, we must consider as true all evidence favorable to Overnite and indulge every reasonable inference and resolve any doubt in Overnite's favor. *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548-49 (Tex. 1985). Because the court rendered a general summary judgment, Overnite must show on appeal that the appellees established neither ground as a matter of law. *Thomson v. Norton*, 602 S.W.2d 473, 477 (Tex. Civ. App.—Dallas 1980, no writ).

In its first issue, Overnite argues that because a fact questions remains on whether the appellees had a good faith claim to a colorable legal right, the court erred in rendering summary judgment on its tortious interference claim. The appellees asserted in their summary motions that they had a federally protected right to engage in the conduct forming the basis of Overnite's claim.

A defendant sued for tortious interference with contract can prevail by establishing the affirmative defense of justification. *Texas Beef & Cattle Co. v. Green*, 921 S.W.2d 203, 210 (Tex. 1996). The justification defense is based on the exercise of either (1) one's own legal rights or (2) a good-faith claim to a

colorable legal right, even though that claim ultimately proves to be mistaken. *Id.* at 211. But methods tortious in themselves are unjustified, and liability is appropriately imposed on a defendant who invades another's contract rights using violence, threats and intimidation, defamation, misrepresentation, unfair competition, or bribery. *Prudential Ins. Co. of Am. v. Financial Review Servs., Inc.*, 29 S.W.3d 74, 81 (Tex. 2000). In addition, legal malice negates the justification defense. *Texas Beef & Cattle Co.*, 921 S.W.2d at 210. Overnite pleaded here that the appellees published the defamatory flier maliciously, so as to interfere with Overnite's contracts and business relationships wrongfully and without justification.

Both appellees admitted in their summary judgment motions, that for the purpose of the motions only, certain allegations of Overnite's petition were true. Specifically, the appellees admitted:

> The [appellees], in publishing the defamatory Flier to Overnite customers, have wrongfully and without justification interfered with these contracts and Overnite's business relationships with its customers. Moreover, [the appellees] published the defamatory Flier to Overnite's customers with the specific intent of wrongfully inducing the customers to breach their contracts with Overnite and to cease using Overnite's services.
>
> Despite a duty to Overnite to not tortiously interfere with Overnite's business contracts and relationships, [the appellees] maliciously and intentionally published the Flier for the purpose of wrongfully injuring Overnite's business.

(Parenthetical information omitted.) By admitting that the flier was defamatory, that they published it maliciously, that they interfered wrongfully and without justification, and that their purpose was to wrongfully induce Overnite's customers

to breach their contracts, the appellees failed to establish conclusively their defense of justification. We sustain Overnite's first issue.

Overnite contends in its second issue that the trial court erred by granting summary judgment on the ground of preemption. The Supreme Court has stated the general rule for deciding when the National Labor Relations Act preempts a state claim: "When an activity is arguably subject to § 7 or § 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted." *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 245 (1959).[1] Courts applying *Garmon* examine separately the arguably protected nature of the activity under section 7 and the arguably prohibited nature under section 8. *E.g., Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters*, 436 U.S. 180, 190 (1978). In moving for summary judgment based on preemption, the appellees presented a two-part argument; they reasoned first that a union's peaceful persuasion of an employer's customers is protected by federal labor law, and second, that Overnite's tortious interference claim, based on peaceful persuasion, is preempted. We determine that the ground of preemption, as the appellees have presented it, is legally insufficient to support the summary judgment.

First, the appellees' assertion in their motions that Overnite's claim is preempted because it is based on the appellees' peaceful persuasion of Overnite's customers is

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[1] Sections 7 and 8 of the National Labor Relations Act are codified as sections 157 and 158 respectively of Title 29 of the United States Code. *See* Labor Management Relations Act, 1947, 29 U.S.C.A. §§ 157, 158 (West 1998). Section 157 of the Act confers rights on employees regarding labor organizations, while section 158 describes unfair labor practices by both employers and labor organizations. *Id.*

too broad. The appellees failed to tailor their ground to Overnite's specific allegation that they tried to persuade by distributing defamatory fliers. To obtain summary judgment, the appellees were required to show that handbilling based on defamatory statements is protected. To ask the trial court to determine whether peaceful handbilling during a labor dispute is federally protected would not resolve the factual contention pleaded by Overnite. Because the appellees' ground failed to meet Overnite's claim as pleaded, their ground cannot support the summary judgment. *Cook v. Brundidge, Fountain, Elliott & Churchill*, 533 S.W.2d 751, 759 (Tex. 1976).

Second, the appellees based their claim of preemption on the "arguably protected," rather than the "arguably prohibited," prong of *Garmon*. The "arguably protected" prong corresponds to section 157 of the United States Code, which addresses the rights of employees to join labor organizations and participate in organized activities. *See* 29 U.S.C.A. § 157 (West 1998). Yet the cases the appellees rely on analyze, not whether union activities are protected under section 157, but whether certain labor union activities are prohibited under section 158. *E.g., Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 588 (1988); *George v. National Ass'n of Letter Carriers*, 185 F.3d 380, 392 (5th Cir. 1999); *cert. denied*, 528 U.S. 1156 (2000). While the considerations justifying preemption under each prong overlap, the prongs differ in significant respects and merit separate analyses. *Sears, Roebuck & Co.*, 436 U.S. at 190. By failing to articulate a cogent legal basis for preemption, the appellees have not carried their burden to show that they are entitled to judgment on that ground as a matter of law. We therefore sustain Overnite's second issue.

Because the appellees failed to establish conclusively their right to prevail based on either justification or preemption, we reverse the trial court's summary judgment and remand the cause for further proceedings.

Jan P. Patterson, Justice

Before Chief Justice Aboussie, Justices B. A. Smith and Patterson

Reversed and Remanded

Filed: March 29, 2001

Do Not Publish

APPENDIX C

THE SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711
(512) 463-1312

September 20, 2001

Mr. G. William Baab
Baab and Denison, L.L.P.
2777 N. Stemmons Freeway
Dallas, TX 75207-2284

Mr. James L. Hicks, Jr.
James L. Hicks, Jr., P.C.
2777 N. Stemmons Freeway
Dallas, TX 75207-2284

Mr. James G. Ruiz
Winstead Sechrest & Minick
100 Congress Ave., Suite 800
Austin, TX 78701-4042

RE: Case Number 01-0393
Court of Appeals Number: 03-00-00390-CV
Trial Court Number: 99-11702-A

Style: INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO and TEAMSTERS LOCAL UNION 657
v.
OVERNITE TRANSPORTATION COMPANY

Dear Counsel:

Today, the Supreme Court of Texas denied the petition for review in the above-styled case.

Sincerely,

John T. Adams, Clerk

by Tanya R. Hunter (Original signed)
Tanya R. Hunter, Deputy Clerk

cc: Ms. Diane O'Neal, Clerk
Ms. Amalia Rodriguez-Mendoza
Mr. Craig T. Boggs
Mr. Brian V. Alcala

APPENDIX D

STATUTORY PROVISIONS INVOLVED

Section 7 of the National Labor Relations Act, Title 29 U.S.C. Section 157 states:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.

Section 158(b)(4) of the National Labor Relations Act, Title 29 U.S.C. Section 158(b)(4) states in relevant part:

> It shall be an unfair labor practice for a labor organization or its agents—
>
> . . .
>
> (4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—
>
> . . .
>
> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in

the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title: *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

. . .

Provided further, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution;